

Board of Contract Appeals  
General Services Administration  
Washington, D.C. 20405

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September 22, 2004

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GSBCA 16422-RELO

In the Matter of CHRISTOPHER P. MURNANE

Timothy D. Murnane, Davidsonville, MD, appearing for Claimant.

Dean Olson, Director, Office of Financial Policy, Department of Energy, Washington, DC, appearing for Department of Energy.

**PARKER**, Board Judge.

Background

In connection with his 2003 transfer from Albuquerque to Los Alamos, New Mexico, Christopher P. Murnane sold his house in Albuquerque and incurred various real estate-related expenses. His employer, the Department of Energy (DOE), reimbursed Mr. Murnane for some of the expenses but denied reimbursement for others. Mr. Murnane has asked the Board to review DOE's decision as to the expenses that were denied.

DOE decided that Mr. Murnane was entitled to be reimbursed a three percent, rather than a six percent, real estate sales commission in connection with the sale of his house. This was because Mr. Murnane entered into an agreement with the purchaser, who was a licensed real estate agent, to reduce the sale price of his home by three percent in lieu of paying the selling agent's three percent share of the six percent sales commission. The listing broker, who also agreed to the fee reduction, has explained that the effect of this arrangement was that the purchaser avoided paying "state and federal income taxes and NM [New Mexico] gross receipts taxes" on the three percent commission to which she would have been entitled.

DOE also denied reimbursement of a \$259.24 transaction fee charged by the listing real estate broker. The purpose of the charge, which was in addition to the three percent commission, was not explained.

Mr. Murnane paid \$1217 for a title insurance policy on the home he sold. This was not reimbursed because title insurance, according to DOE, is customarily paid for by the purchaser, rather than the seller, who derives no benefit from the insurance.

DOE denied reimbursement of a \$40 charge by an attorney for document preparation because the settlement sheet did not explain what document was prepared or whether the attorney was retained by the buyer or the seller.

Finally, Mr. Murnane was denied reimbursement of a \$469.81 charge for "Home Warranty to Homebuyer's Safeguard" because, according to DOE, purchase of a home warranty is not a reimbursable expense.

### Discussion

#### Real Estate Sales Commission

DOE's decision to reimburse Mr. Murnane only for the three percent real estate commission he actually paid was in accordance with applicable regulation and longstanding precedent. The relevant section of the Federal Travel Regulation (FTR) provides for reimbursement of:

- (a) Your broker's fee or real estate commission that you pay in the sale of your residence at the last official station, not to exceed the rates that are generally charged in the locality of your old official station[.]

41 CFR 302-11.200(a) (2003). An employee who sells his house to a real estate agent, and structures the transaction such that the sale price of his house is reduced by an amount equal to the commission to which the agent would have been entitled, has not actually incurred and paid that portion of the commission and "cannot claim reimbursement to the broker's commission that might have been owed had the price not been reduced." David Goldblum, GSBCA 14142-RELO, 97-2 BCA ¶ 29,140, at 144,973; see Harlan C. Thiel, GSBCA 13688-RELO, 97-1 BCA ¶ 28,710 (1996). "The Government is not authorized to reimburse its employees for the hypothetical expenses of the bargain that the parties may have contemplated, but did not make." Thiel, 97-1 BCA at 143,333.

#### Transaction Fee

There is no provision in the FTR that specifically allows reimbursement of a "transaction fee" paid to a real estate broker or agent. See 41 CFR 302-11.200. In this case, the transaction fee appears to be nothing more than additional sales commission. The agency was correct in denying reimbursement without either an explanation of the charge showing that it was for a specifically reimbursable service or a showing that the total real estate commission paid to the listing broker, including the \$259.24 transaction fee, did "not . . . exceed the rates that are generally charged in the locality of your old official station." Id. 302-11.200(a).

#### Title Insurance

The cost of a title insurance policy may be reimbursed to a seller only if, among other things, the costs "[a]re usually furnished by the seller." 41 CFR 302-11.200(d)(3). Here,

there is no evidence in the record showing that title insurance, which is for the benefit of the purchaser, is usually furnished by the seller. The agency was thus correct in denying reimbursement for this \$1217 charge.

#### Document Preparation

The cost of preparing conveyances, other instruments and contracts is reimbursable to the seller to the extent such costs (1) have not been included in other residence transaction fees, (2) do not exceed the charges for such expenses that are normally charged in the locality of the residence, and (3) are usually furnished by the seller. 41 CFR 302-11.200(d). Without knowing what document was prepared in connection with the \$40 charge for document preparation, or whether the preparer was the purchaser's or the seller's attorney, the agency correctly decided that it was unable to determine whether the three-part test for reimbursement had been met. DOE has indicated that it will reconsider this issue if the appropriate information is provided.

#### Home Warranty

DOE correctly denied reimbursement for the cost of a home warranty. There is no provision in the FTR allowing reimbursement for a home warranty provided by the seller. Such a warranty is a form of insurance, which is specifically listed among the residence transaction expenses for which the agency may not pay. 41CFR 302-11.202(c); Juanita L. Nason, GSBCA 15746-RELO, 02-2 BCA ¶ 31,890.

#### Decision

The claim is denied.

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ROBERT W. PARKER  
Board Judge